IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/9/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.19893 OF 2003
AND
CRL.M.P.Nos.5573 & 5574 OF 2003.

1.Kailash Rohera
2.Dr.C.Karmegam
3.R.H.Murugan
4.R.Sivakami ... Petitioners

-Vs-

M/s.First Leasing Company of
India Limited,
No.749, Mount Road,
Chennai-2,
represented by its
authorised Agent R.Natarajan ... Respondent

Criminal Original Petition filed under Section 482 of the Code of
Criminal Procedure for the relief as stated therein.

For petitioners : Mr.M.Selvaraju

For Respondent : ---

:O R D E R
The petitioners, who are the accused No.5 to 8 in C.C.No.7839 of 20 00 on the file of the Court of XIV Metropolitan Magistrate, Egmore, Chennai-8 have come forward to file the above criminal original petition praying to quash the same on grounds that the petitioners were Directors in the first accused company viz. M/s.Keycer Agro Products Ltd., Salem and since the petitioners were pre-occupied otherwise than the activities of the first accused company, they resigned their Directorship on 22.3.1999 and that the first accused company also filed Form-32 with the Registrar of companies on 24.9.1999 informing about the resignation of the petitioners and thereafter the petitioners have no involvement in the firm of the first accused company.

2. The petitioners would further submit that subsequent to their resignation, the first accused company had issued three cheques which are the subject matter of the case in C.C.No.7839 of 2000 mentioned above, and they are alleged to have been dishonoured for reason ` exceeds arrangement'; that therefore, the respondent has initiated the above criminal proceeding

during August, 2000 against the first accused and the petitioners and some others and they are appearing before the said Court; that the respondent, without knowing about the facts of the petitioners having retired from the first accused company, has falsely implicated them also as accused in the above complaint without any offence having been committed by them as a result of which they are put to unnecessary harassment for no fault on their part; that likewise, the petitioners have been made the accused in five such other cases also for the offences committed during January, February and March, 2000 by the first accused company and hence on such grounds, they have come forward to file the above criminal original petition to quash the said proceeding.

3. During arguments, the learned counsel appearing on behalf of the petitioners, besides tracing the facts of the case as revealed in the petition, would also cite the following two judgments:

1.2001(2) MWN (Cr.) DCC 106 (DCC) (ASHOK MUTHANNA & OTHERS vs. CEAT FINANCE SERVICES LTD. REP.BY LEGAL ASSISTANT, G.ALAGUMANI)
2.2001(2) MWN (Cr.) (DCC) 13 (ASHOK MUTHANNA & OTHERS vs. WIPRO FINANCE LTD., REP.BY AREA MANAGER, CHENNAI)

4. In the first judgment cited above, it is held by a learned single Judge of this Court that `according to the complaint, the cheques were issued on 16.12.1998 and 30.1.1999 ... that the petitioner therein retired from the accused company on 21.3.1998 itself and as such he was not in charge of the affairs and is not responsible for the business of the company for having issued the cheques. The Form-32 produced by him clearly shows that the retirement of the second petitioner was on 21.3.1998 and the same has been intimated to the Registrar of Companies on 6.4.1998' and hence the proceeding against him were quashed.

5. In the second judgment cited above, the same learned Judge isn not disputing Form-32 being a public document against one of the accused since he did not function as Director either on the date of issuance of cheque or when the cause of action arose for non-payment of the cheque amount and would quash the proceedings against the second petitioner therein

6. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner, during the time that the above criminal original petition came up for admission since the matter is only on a point of law to the effect that since it is alleged on the part of the petitioners that on the date of issuance of the cheques in question, they were not the Directors of the first accused company, whether the proceeding initiated against him are liable to be quashed', since no prejudice would be caused to the respondent by answering such a legal point, the main criminal original petition has been taken up for disposal.

7. This Court is not in agreement with the proposition held by the learned single Judge of this Court for its inconsistency in declaring the law in both the above two cases cited since merely it is not the duty of

the Court either to arrive at a hasty conclusion based on Form-32 that on the date of the issuance of the cheques in question, the accused were not the Directors of the first accused company or even earlier at a particular point of time when the cause of action is said to have arisen.

8. In a cheque bouncing case, whenever such a situation is met with and the accused wanting to escape from the clutches of law citing some judgments delivered in a different angle or clinging on some technicalities, it is the bounden duty of the Court to go deeper and broader to find out the depth of the intention of law so as to render justice in the real sense of the term.

9. No doubt, even admittedly that the petitioners have retired from the first accused company activities some months earlier to the issuance of the cheques in question, there is no denying of the fact on the part of the petitioners that earlier to their retirement they were the part and parcel of the company activities as its Directors and in such event, the wordings of Sections 138 and 141 of the Negotiable Instruments Act are to be very carefully gone into.

10. Section 138 of the Negotiable Instruments Act stipulates that `where any cheque is drawn for payment of any amount of money to another person ... for discharge in whole or in part of any debt or other liability'. Section 141 of the said Act stipulates that `every person, who, at the time of offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, would be deemed to be guilty of the offence.'

11. The answer for these legal requirements cannot, so easily be obtained simply stating that either at the time of drawing of the cheque or sometimes earlier, the accused retired from the Directorship of the company, which is faulty and erroneous. But, the Court has to very carefully go into the timing at which the payment of any amount of money for the discharge in whole or in part of any debt or other liability arose so as to enable the drawer to issue the cheque at a later point of time as it is the integral part of Section 138 of the Negotiable Instruments Act and further in the case of company, every person, who, at the time the offence was committed was in charge of and was responsible to the conduct of the business of the company, as well as the company itself, shall be deemed to be guilty of the offence.

12. From the above clarification, it is evident that primarily and unless these two parameters fixed by law are ascertained, no conclusion could be arrived at nor any decision taken by the Court simply stating that on the date of issuance of the cheque, the accused was not a Director of the company and by the time when the accused got relieved from the company under Form-32, the cheque was not issued etc. which attitude would only pave an easy route for the accused to escape from the clutches of law without even a trial being held testifying the validity of the case relating

to the position of law as afore brought forth.

13. The operative portions of the Sections 138 and 141, as above extracted, as to at what point of time in the past, the payment of the amount of money for the discharge in whole or in part of the debt or other liability had arisen and in the case of company, at the time when the debt or other liability arose for the accused, whether the accused persons were either in charge of or responsible to the company for the conduct of the business, could be ascertained only on a trial with due opportunity for parties to be heard and the same could not be concluded on the face value of the retirement of a partner from a firm or a Director from a company or Corporation on production of a copy of the Form-32 which any accused can produce after committing all criminality in the company and therefore unless a trial is held, the truth cannot be ascertained and therefore no order of quash could be passed by this Court simply by misuse of the inherent powers conferred by law under Section 482 of the Cr.P.C. Therefore, it is always advisable in such event, to direct the parties to undergo the trial without relieving from the responsibility of answering the bounced cheque by the company, which, on the face of it, is presumed that it has been issued only for the debt or liability by the drawer of the cheque and therefore even without giving effect to Section 139 of the Negotiable Instruments Act, no decision to quash the entire proceedings can be passed, which would only pave the way for the accused to escape from the clutches of law.

14. For all the above discussions held, in the case in hand, since it is the trial which is the answer, no quashing of the case could be resorted to and hence the following order:

In result, the above criminal original petition does not merit acceptance and is dismissed at the admission stage itself.

Consequently, Crl.M.P.Nos.5573 and 5574 of 2003 are also dismissed.

Index: Yes
Internet: Yes
Rao

To

The XIV Metropolitan Magistrate,
Egmore, Chennai.

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